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IN THE

SUPREME COURT OF THE UNITED STATES

No. 75-170

EDDIE THOMPSON, JR.,
Petitioner,

vs.

CITY OF COVINGTON, et al.,
Respondents.

BRIEF OF RESPONDENTS IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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No. 75-170

EDDIE THOMPSON, JR.,

Petitioner,

vs.

THE CITY OF COVINGTON, BERNARD GRIMM, WILLIAM SAGESER, CARL BOWMAN, GEORGE WERMELING, JAMES SIMPSON, PAUL ROYSTER, JUNE HEDRICK, DAN WOLFE, JOE CONDIT, BILL WOODS, ROGER CARLTON AND HOBART WOOTEN,

Respondents.

BRIEF ON BEHALF OF RESPONDENTS, CITY OF COVINGTON, BERNARD GRIMM, WILLIAM SAGESER, CARL BOWMAN, GEORGE WERMELING, JAMES SIMPSON, PAUL ROYSTER, JUNE HEDRICK, DAN WOLFE, JOE CONDIT AND BILL WOODS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This case was commenced in the United States District Court for the Eastern District of Kentucky by the Petitioner, Eddie Thompson, Jr., and the Covington Housing Development Corporation (hereinafter H.D.C.) against the City of Covington, and Mayor, Commissioners and certain employees of the City and two HUD Representatives

under Title 42, United States Code, Sections 1981 and 1983.

The City of Covington filed a Motion to dismiss it as a party-defendant since it was not a proper party defendant, as it was not a person within the purview of the Civil Rights Act.

Subsequently, the City of Covington filed an Answer, setting forth as some of its defenses the facts set forth in its Motion heretofore referred, and the fact that the Plaintiff, Covington Housing Development Corporation, should be dismissed, since it did not authorize the filing of this action.

The Defendants-Respondents, Bernard Grimm, William Sageser, James Simpson, Carl Bowman, George Wermeling, Paul Royster, June Hedrick and Dan Wolfe, filed their Answer, setting forth as part of their defense that fact that the Plaintiff, H.D.C., did not authorize the filing of this action. To the same effect were the Answers of the Defendants-Respondents, Billy L. Woods and Joseph T. Condit.

On November 20, 1973, the depositions of Eddie Thompson, Jr. and Broadus Blythe, Chairman of the H.D.C., were taken by the defendants.

On December 18, 1973, the District Court dismissed the defendant, City of Covington, as a party defendant.

The Plaintiffs served Interrogatories, in April of 1974, upon the Defendants, Paul Royster, Bernard Grimm, George Wermeling, William Sageser, James Simpson, June Hedrick and Dan Wolfe. Subsequently, they filed a Motion for Summary Judgment and an Order dismissing the Plaintiff, H.D.C., as a party plaintiff, with a Memorandum in support. Subsequently, the Plaintiffs filed a Brief in opposition to said motion. Thereafter, the said Defendants-Respondents filed a Reply Brief.

On June 26, 1974, the Plaintiffs filed a Motion for Summary Judgment with a Brief in Support thereof. On July 11, 1974, the Affidavit of June Hedrick was filed and on July 12, 1974, a Reply Brief to Plaintiff's Motion for Summary Judgment was filed.

On August 8, 1974, the Defendants-Respondents, Joe Condit and Billy L. Woods, filed their motion for Summary Judgment with a Memorandum in support thereof.

On September 11, 1974, the District Court entered an Order and Memorandum sustaining the Motion of the Defendants-Respondents, Bernard Grimm, William Sageser, Carl Bowman, James Simpson, George Wermeling, Paul Royster, June Hedrick and Dan Wolfe, for Summary Judgment and dismissing the Complaint. On September 13, 1974, the District Court entered an Order amending the Order of September 11, 1974, to include the Defendants-Respondents, Joe Condit and Billy Woods, as to sustaining Motion for Summary Judgment as to them.

On October 11, 1974, a Notice of Appeal was filed with regard to the Order of September 11, 1974.

On April 23, 1975, the United States Court of Appeals for the Sixth Circuit affirmed the Judgment of the District Court stating that it was correct in holding that the individual Plaintiff, Thompson, was not authorized to initiate or prosecute this action on behalf of his corporate employer, and that the civil rights of Thompson have not been infringed.

On May 6, 1975, Thompson, filed a motion in the Court of Appeals for a rehearing en banc, which was refused on June 5, 1975.

(FACTS)

The idea of a housing development corporation had been in existence approximately two years. HUD's letter of December 1, 1971, raised certain questions pertaining to the revolving loan fund and questions in relation to the Housing Development Corporation Project. Part of these questions were answered on or about February 24, 1972. However, the project was on "hold" until these questions were resolved.

The "hold" action remained in effect until mid October, 1972, and at that time it was released because all questions had been adequately answered. As a result, the project began to staff up.

Originally, the American Urban Peoples Coalition (a corporation), in June 1972, requested to become the operating agency for the Housing Development Corporation Project. At this time, Eddie Thompson, Jr. was the President or Officer of this corporation. However, it was a corporation organized for profit and Federal Regulations prohibited it from holding and using the monies under the program involved.

Thus, the non-profit corporation called the Covington Housing Development Corporation (H.D.C.) was formed by an attorney, apparently retained by Eddie Thompson, Jr., on or after August 27, 1972.

Five members of the Board of Directors were appointed by the American Urban Peoples Coalition, and five members of the Board of Directors were appointed by the Mayor and Board of Commissioners of the City of Covington, in various fields of endeavor, so as to give the expertise and knowledge of all facets of housing construction.

The H.D.C. entered into a contract with the City of Covington, and said contract is dated October 5, 1972.

Dave Johnson, a Black, was the Acting Director of the Model City's program at that time (and was the Acting Director until Janury 29, 1973). Eddie Thompson, Jr., after his appointment as the Executive Director of the H.D.C., on or after October 11, 1972, conferred with Dave Johnson, for all policy matters concerning the H.D.C., and only went to the Staff of the Model City's program for implementation of decisions that they had already reached.

On December 5, 1972, the scope of services which had been previously prepared by Dave Johnson and Eddie Thompson for the Third Action Year starting December 1, 1972, was rejected by HUD and a new one requested. A letter from HUD advised that no supplemental funds should be expended until an adequate scope of services and production schedule was submitted. Further, it was required that the source of funding which would be drawn in by the supplemental funds should be identified. After the rejection of December 22, 1972, Eddie Thompson then came to June Hedrick for approval of the budget and scope of services that had been prepared by Eddie Thompson, Jr., and for assistance in developing this into an acceptable form so as to get the Housing Development Project off of "hold" with HUD. The scope of services referred to was submitted to HUD on December 14, 1972, in an extremely inadequate manner, according to HUD.

HUD's letter of December 22, 1972, outlined what changes would be necessary to bring the scope of services to an adequate level.

A new scope of services had been sent to HUD on January 2, 1973.

On January 5, 1973, a Moratorium was announced by the Federal Government on all subsidized housing programs. This Moratorium cut off all funds, except for existing, operating programs. Due to the fact that this

original contract with the City was signed in October, 1972, and extended through November 30, 1972, there had not been sufficient time to get this program into an operating condition when the sudden Federal Moratorium was announced in January, 1973.

The success of the H.D.C. was totally removed by this Moratorium.

Dave Johnson, who was the Acting Director of the Model City Program until January 29, 1973, had the duty to inform the City Commission of the activities of the Model City's program, to present the facts and reports, etc., which would have, and did include the H.D.C., for approval by the City Commission.

The Department of Housing and Urban Development (Atlanta E.E.O. Office), conducted an investigation of the charge filed with them by Eddie Thompson, Jr., charging racial discrimination and found no factual evidence in support of his claims. The letter of November 27, 1973, from the Regional Administrator is attached hereto as an exhibit. Appendix to Brief of Defendant-Appellees as filed in the Sixth Circuit Court of Appeals, P. 100.

ARGUMENT

The Petition for a Writ of Certiorari should be denied for the reasons that:

I. THE DECISION OF THE COURT OF APPEALS AFFIRMING THE JUDGMENT OF THE DISTRICT COURT IN GRANTING THE RESPONDENT, CITY OF COVINGTON, MOTION FOR SUMMARY JUDGMENT WAS CORRECT UNDER APPLICABLE LEGAL PRINCIPLE.

a) The District Court was required by Established Judicial Precedent to Dismiss the City of Covington as a Defendant to this Action.

The first issue presented by the Petitioner for review to the Court concerns whether the Trial Court was correct when, in its Order of December 18, 1973, it dismissed the City of Covington as a Defendant.

The District Court in dismissing the City as a defendant in this action followed established judicial precedents. The legislative aims of 42 U.S.C. § 2983, which this action was commenced under, was thoroughly discussed by this court in *Monroe* v. *Pope,* 365 U.S. 167 (1961). In *Monroe* the court concluded that a municipality is not a "person" within the purview of the aforementioned section of the United States Code stating the following:

> the response of the Congress to the proposal to make municipalities liable for certain actions being brought within federal purview by this Act . . . was so antagonistic that we cannot believe that the word 'person' was used in this particular Act to include them. *Id.* at 191.

See also, *City of Kenosha* v. *Bruno,* 412 U.S. 507 (1973); *Patrum* v. *City of Greensburg, Kentucky,* 6th Cir., 419 F2d 1300 (1969) cert. denied 397 U.S. 990 (1970); *Deane Hill Country Club, Inc.,* v. *City of Knoxville,* 6th Cir., 379, F2d 321 (1967), cert. denied 389 U.S. 975 (1967).

The petitioner's vicious allegations that the City's attorney, Charles Wagner, along with respondent Joseph Condit prevented his former counsel, Clifford Fennell, from submitting a brief or from attending depositions in reply to the City motion to dismiss are completely unsupported by any kind of factual references. In fact, the allegations are so frivolous that the petitioner failed to raise it in his brief to the Sixth Circuit Court of Appeals.

In reply to the question which was raised by the petitioner concerning the desirability of the City under 42 U.S.C. Sec. 3301 and 3303 we direct the Court's attention to a copy of the original complaint, (Appendix of Defendants Appellees filed in the Sixth Circuit Court of Appeals, P. 1) which shows that the only section of the United States Codes which this action was commenced under were 42 U.S.C. 1981 and 1983. No where in the complaint were sections 3301 and 3303 raised. Since, there has been no amendment to the original complaint the petitioner's reference to 3301 and 3303 is unwarranted.

b) The Court of Appeals Did Not Have Jurisdiction To Hear the Issue of the Dismissal of the City of Covington For Rule 4 (a) of the Federal Rules of Appellate Procedure Requires that an Appeal Be Taken Within Thirty Days of the Entry of the Order, Which the Petitioner Failed To Do.

The Sixth Circuit Court of Appeals has a statutory requirement that appeals from District Courts must be filed

within a prescribed period. Rule 4 (a) of the Federal Rules of Appellate Procedure, provides in part:

> In a civil case . . . in which as appeal is permitted by laws as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days of the date of the entry of the judgment of order appealed from . . .

Since the order to dismiss the City of Covington was entered on December 18, 1973, it is evident, to all except the petitioner, that the thirty day appeal period had long expired when Notice of Appeal was filed on October 11, 1974. Therefore, Thompson's contention that the Court of Appeals erred is just one of his numerous ficticious allegations.

Further, the Court should also note that the petitioner's petition is void of any fact supported allegation that the City of Covington discriminated against him or any other person, black or white, in its dealings with the H.D.C.

II. NEITHER THE ARTICLES OF INCORPORATION OR THE BY LAWS OF THE COVINGTON HOUSING DEVELOPMENT CORPORATION AUTHORIZED EDDIE THOMPSON TO FILE THIS ACTION IN THE NAME OF THE CORPORATION.

The Petitioners ask rhetorically "What proof was there in the original record that Thompson was not authorized to file this suit on behalf of the Corporation?" First, even though the petitioner's brief has the Covington Housing Development Corporation as a petitioner, it is well worth noting that only Eddie Thompson appealed the decision of the Sixth Circuit Court of Appeals as is evident by the

official records of this Court. Hence, it is obvious that the aforesaid question deals with a segment of the decision of the lower court which is not on appeal before this tribunal. However, we will address this matter only to clarify the situation at bar, which is Eddie Thompson's alledged grievance.

It is well established in the case law of the Commonwealth of Kentucky that the governing power of the corporation is vested in the Board of Directors, which can only bind the corporation when acting as a body. *Har-Bel Coal Co.* v. *Asher Coal Mining Co.,* (Ky.) 414 SW 2d 128 (1966). In *Har-Bel Coal Co.,* supra, the court stated the following:

> "Authority to bind the corporation must come either from the by laws or the board of directors, or the action of the officer must be of the nature that comes within the apparent scope of his employment. . . . the mere representation of a claimed agent, even when coupled with signing a paper in such capacity, are not sufficient to show his agency or the extent thereof." *Id.* at 130.

Even this power is negated in the event of internal corporate dissension regarding the propriety of the suit. *Contee Construction Co.* v. *Cay Construction Co.,* Fla. 221 So 2d 792 (1969); Note, 50 Ky. L. J. (1961).

The Kentucky Legislature has also acted in the area in which this court is now reviewing. Section 271A.250 (2) of the Kentucky Revised Statutes (hereinafter KRS) states the following:

> "All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be determined by resolution of the board of directors not inconsistent with the by laws."

Although the HDC was incorporated under KRS Chapter 273, the provision of KRS Chapter 271.A are applicable to "any relating to a corporation of that kind either are unconsistent with this chapter or state that the provisions of this chapter not apply to it." KRS 271A.015 (1).

Both the aforesaid cases and statute restrict the actions of all corporate officers and agents to only those stated in the by laws or authorized by the board of directors. Therefore, in order for Thompson to have the authority to file this suit, such power must have been vested in him by either the by laws or by resolution from the board of directors.

The Board of Directors of HDC did not authorize Thompson to initiate this proceeding.

A review of the records will plainly show that Eddie Thompson never received board authorization in filing this suit. First, the chairman of the board of the HDC, Broadus Blythe, has testified under oath in his deposition that the Board of Directors did not give the petitioner, Thompson, the authority to file this action in the Corporation's behalf. (Blythe Deposition, Questions 23, 75 to 80, inclusive).

Secondly, the petitioner's failure to produce records of the Board which specifically sanction this action ignores the "well settled doctrine that a corporation can only act through its directors at an official meeting regularly held, and that its acts can be proven only by the records of such meetings". *Bastin* v. *Givens, Admrx.*, 170 Ky. 201 (1916); *Clay* v. *Mt. Holly Development Company*, Ky., 646 SW 2d 621 (1971); *Star Mills* v. *Bailey*, 140 Ky. 194 (1910). The fact that no "official meeting" of the Board ever sanctioned this action is one even admitted to by the petitioner himself. (Thompson's Deposition Question 36). Thompson's reliance

on informal conversation with some of the Board Members for authorization to commence this suit negates the principle that a business will not be bound by agreements secured among isolated directors. *Caddy Oil Company* v. *Sommer,* 186 Ky. 843, 847; see 19 Am Jur 2d "Corporations", Section 1157.

It is evident that the Board of Directors of HDC never formally authorized the initiation of this suit.

The by laws did not grant the Executive Director the power to initiate this suit.

The fact that Thompson fails to get the board to authorize the filing of this suit leaves the by laws as his only possible means for authorizing it. A review of the facts will show that the by laws do not grant the Executive Director the power to initiate a suit of this magnitude.

The by laws of the HDC creates the position of Executive Director and defines his duties. Article 5, Section 4, of the by laws reads as follows:

> The Executive Director shall be the Chief Executive Officer of the corporation. He shall have custody of the Corporation funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation. He shall deposit all monies and other valuable effects in the name, and to the credit of the corporation in such depositories as may from time to time be designated by the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the Chief Executive Officer of the Corporation.

Since the power to initiate suits is not among those powers which are specifically given to the Executive Director, the petitioner must believe that the power rests

within the general powers of that office. However, it is well settled that a manager's authority is limited to the conduct of ordinary business affairs:

> (T) he general business of corporations is frequently entrusted to the management of a general manager . . ., who has the power to bind the corporation by acts within the scope of his apparent authority. Such authority is not limited by the fact that the general manager is also the president or other officer of the corporation, for it is not incident to such other office, but is incident to the management of the business . . . . He has been deemed by numerous authorities to be the principal officer of the corporation, having general charge of those business matters for the carrying on of which the company was incorporated, and he has the implied or ostensible power to do any act which is usual or necessary in the ordinary transaction of the company's business. 19 Am. Jur. 2d "Corporations" Section 1174, p. 599.

See Also *Gaddie v. Collins of Kentucky*, Ky., 248 S.W. 2d 722, 723 (1952). It is evident that this litigation relates not to the ordinary business affairs of the corporation, but rather is an extraordinary attempt outside the usual course of business.

It should be further noted that the minutes of the Board of Directors for the October 25, 1972 meeting state: "Mr. Thompson also makes it clear anything he does needs Board approval." It is also questionable as to whether Eddie Thompson was the Executive Director at the time this action was filed or, for that matter, at the present time, when the corporate minutes of November 29, 1972 are considered.

Also, the minutes of the Board of Directors of the HDC for March 13, 1973, terminated all employees, including the Petitioner, effective as of March 16, 1973, and other-

wise terminated the entire enterprise. The District Court was aware of this as it referred to the fact that this litigation was not in the ordinary course of business but rather was an attempt to revive an enterprise which the corporation had ordered terminated.

As to the petitioner's reliance on *Elk Valley* v. *Thompson,* 150 Ky. 614, 150 S.W. 817, a careful analysis of the case discloses that it affords no more support to the Petitioner's argument than do the other cases cited in his petition.

In *Elk Valley* the appellee received a judgment from the lower court which executed a contract that was enacted by the general manager without the authorization of the Board of Directors. In overruling the lower Court, the Court of Appeals stated the general rule which the Petitioner so wholeheartedly contends authorized his initiation of this suit in the name of the H.D.C. (Petitioner's Brief p. 8) However, Eddie Thompson's position must fail for the exact same reason that H. C. Thompson failed in the aforesaid case. The court stated:

> Applying to the facts of this case these well established principles, the case of H. C. Thompson must fail for two reasons: (1) It is not clearly shown that the corporation derived any benefit from his services . . . . Nor does it appear that he suffered any loss by the failure of the directors, when their attention was called to the fact that he had a contract, to promptly disaffirm it. (2) It is not shown that the directors, who, according to H. C. Thompson knew of the contract, were advised fully or at all of the circumstances surrounding its execution. It only appears that they knew of the existence of the contract.

A brief look at the factual background of this action shows that the H.D.C. has not been shown to have derived

any benefits from this suit. In fact, this suit, as well as Eddie Thompson, has proven to be a detriment to the H.D.C. in that the Corporation has been charged with the responsibility of paying previous court costs.

Further, the petitioner has likewise failed to show that the directors who, according to him knew of this suit, were advised fully or at all of the circumstances surrounding its initiation.

It is evident that Blythe, the Chairman of the Board of Directors, did not know the underlying circumstances surrounding this litigation for he testified that there was no action that would lead him to believe that the H.D.C. was closed on account of racial reasons. (Question 90, Blythe Deposition) Therefore, acknowledging the fact that he knew of no factual basis or circumstances for Thompson's charges of racial discrimnatory practices by the Respondents.

Thus viewed, the *Elk Valley Coal Co.* decision is of no assistance to the Petitioner.

Thompson's query into the matter of the legality of suing a party in his representative capacity and then saying that said party cannot sue in this representative capacity is totally unmeritorious in that such a sequence never occured among the parties involved in this litigation. An examination of the record will reveal that there are no facts which show that the Petitioner was sued in his representative capacity as the General Manager of the Corporation. Also, it should be noted that this question was not raised in the petitioner's brief filed in the Sixth Circuit Court of Appeals.

III. THE MODEL CITY PROJECT IN WHICH EDDIE THOMPSON WAS ASSOCIATED WAS NOT PHASED OUT ILLEGALLY BY THE RESPONDENTS. THUS NONE OF THE PETITIONER'S RIGHTS WHICH ARE GUARANTEED BY THE FOURTH, SIXTH, AND FOURTEENTH AMENDMENTS TO TITLE 42, U.S.C. SECTIONS 1981 AND 1983 HAVE BEEN TRANSGRESSED.

The employees of a Model City project which is proven to have been illegally phased out for racial reasons would be entitled to any back wages owing to them. However, that is not the case in Thompson's situation for such a racial premise has never been proven to have existed. As previously mentioned in the facts of this proceeding, the HDC project was merely on hold when the Federal Moratorium of January, 1973 was put into effect. It was this moratorium which was the underlying cause for the termination of Model City project with which the petitioner was involved. Thompson's allegation that the respondents caused the curtailment of said project is not one based on actual factual references which this Court can view of their merits, but rather is one based on a fantasy that Thompson's mind can alone grasp.

There exists no proof whatsoever that the respondents, Bernard Grimm, James Simpson, William Sageser, Carl Bowman, and George Wermeling, who are the Mayor and City Commissioners of the City of Covington, violated any of Thompson's federally protected rights in their dealings with the Model City program. In fact, the Petitioner's

testimony in his deposition reveals, from his own mouth, that there is and was no discrimination against him by them. (Questions 181 to 190, inclusive; Question 316; Questions 684 and 685; Questions 756 to 764, inclusive, and the answers thereto of Thompson's Deposition)

The Petitioner's charges against Joseph Condit, Bill Woods, Paul Royster, June Hedrick and Dan Wolfe are likewise devoid of any supporting evidence.

The Model City program with which Thompson was associated was in its infancy and as late as December 26, 1972, had no idea of what they were going to do. Thus it is obvious that, when the Federal Moratorium was announced on January 5, 1973, Eddie Thompson and the Covington Housing Development Corporation, on their own part and knowledge, were woefully lacking and that any deficiencies were a product of theirs and not others, Further, the Court should note that the H.D.C. was not the only segment of the Model City Program involved in the freeze of monies, for the entire Program was supposed to be phased out by July 7, 1973.

It is apparent that the Petitioner has no personal remedy for injuries suffered by the Covington Housing Development Corporation. *Mullins* v. *First National Exchange Bank of Virginia,* W.D. Va., 275 F.Supp 712, 721 (1967).

North City Area-Wide Council, Inc. v. *Romney,* 469 F2d 1326 (1972) and *Rodriquez* v. *Barcelo,* 358 F.Supp 43 (1973) which are cited by the Petitioner in his behalf, can easily be distinguished from the case at bar because in those proceedings, the plaintiffs' allegations were supported by facts in which the courts could base a decision. Thompson's case is made up of a series of unproven allegations.

As for the Petitioner's allegation that he has been forced into involuntary bankruptcy by the City and its officials, he is again attempting to play on the passions of this Court. First, Thompson has testified in his deposition that he was employed from June 13, 1973 to September 25, 1973 at the Housing Development Corporation in Cincinnati at a salary of $362.00 per week and at the Turner Construction Company from October 23, 1973 to at least the date of the deposition, November 29, 1973, at the yearly salary of $13,900.00. Also, it is well worth noting that the petitioner presently owns the following real property:

1) His home at 734 Highland Avenue, Covington, Kentucky Purchased on February 1, 1966. Assessed value for 1974 is $15,000.00

2) A building on the N.W. corner of Greenup and Robbins Streets. Purchased on August 8, 1973. Assessed value for 1974 is $7,000.00.

3) A building at 309 Pleasant Street, Covington, Kentucky. Purchased on February 2, 1974. Assessed value for 1974 is $8,500.00.

Thompson also owns stock in the American Urban People's Economic Development Company, which is a corporation for profit located in Covington, Kentucky. Further, in January or February of 1975, the petitioner purchased a 1969 Oldsmobile, and there are no liens of record against this automobile. Thus, he must have paid cash for it.

Although, in all due fairness to the Petitioner, we do not claim to know the duration of his employment at the Turner Construction Company, however, it is still evident that the termination of the Model City Program in 1973

did not force him into the state of dispair as he has led this Court to believe.

In responding to that segment of the Petitioner's allegation which states he was injured by the illegal phasing out of the Model City Program, we will first remind this Court that there is no evidence on which the Petitioner's accusation of illegality can be grounded. Secondly, if in fact Thompson was injured by the phasing out of the Model City Program, his remedy would not rest with any of the named respondents, but would lay exclusively with that section of the Federal Government which ordered the 1973 Moratorium (which was not illegal).

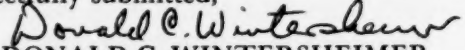
CONCLUSION

The Petition has not shown that there are any reasons for a Writ of Certiorari to be issued for the review of this case pursuant to Rule 19(1) of the Rules of the Supreme Court of the United States.

The record of the District Court contains, in the Petitioner's behalf, only his complaint. However, the deposition of Broadus R. Blythe, Chairman of the Board of Directors of the Corporation, the deposition of the Petitioner, himself, the interrogatories and answers thereto and the official corporate minutes of the corporation are contrary to and disprove totally the allegations of the complaint. Thus, the District Court acted properly in granting Summary Judgment. On review, the Sixth Circuit Court of Appeals independently reviewed the record and arrived at the same conclusion that the respondents were entitled to Judgment in their favor as a matter of law.

The decision of the United States District Court for the Eastern District of Kentucky as well as the Sixth Circuit Court of Appeals were legal, just and proper.

Respectfully submitted,



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